

REMARKS

Applicants submit this Response in response to the first Official Action of a Request for Continued Examination (RCE) of the above-identified patent application. In the Official Action, the Examiner continues to reject all of the pending claims of the present application, namely Claims 1-24, under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,798,706 to Jeffrey A. Kraemer, et al. (the "Kraemer '706 patent"). As explained below, however, Applicants respectfully submit that the claimed invention is patentably distinct from the Kraemer '706 patent, and accordingly, traverse this rejection of the claims. Nonetheless, Applicants have amended Claims 1 and 4 to correct inadvertent typographical errors. As will be noted, these amendments are not narrowing and have not been introduced for purposes substantially related to patentability. In view of the following, Applicants respectfully request reconsideration of the present application and allowance of the claims based.¹

Again, independent Claim 1 of the present application recites an apparatus for detecting adversarial activity on a network that includes:

- a memory adapted to store a host table;
- a key exchanger adapted to derive a cipher key
- a translator adapted to translate predetermined portions of packet header information of a data packet according to a cipher algorithm keyed by the cipher key, wherein the predetermined portions include an address;
- a mapping device adapted to map the address to the host table;
- a host resolution device adapted to issue a request to the network to resolve the address when the address does not match an entry in the host table and to supplement the host table with the address upon receipt of a reply to the request that indicates that the address is valid; and
- an actuator adapted to trigger a security device when the address does not match an entry in the host table.

As indicated above and explained below, the Kraemer '706 patent does not teach or suggest the apparatus of independent Claim 1. More particularly, the Kraemer '706 patent does not teach or suggest either the key exchanger or the translator of the claimed invention. The

¹ As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Official Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

Official Action cites PCT Patent Application Publication No. WO 97/26734 (the "'734 publication") as allegedly incorporated by the Kraemer '706 patent, as disclosing these features of the claimed invention. Applicants respectfully submit, however, that not only does the Kraemer '706 patent not incorporate any references therein, the Kraemer '706 patent also does not refer to or note the '734 publication or any corresponding application or publication.

As explained in MPEP § 2163.07(b), an application may incorporate by reference the content of another document such that the incorporated content is treated as part of the text of the application as filed. As further explained in MPEP § 608.01(p), however, "[m]ere reference to another application, patent, or publication is not an incorporation of anything therein" Rather, incorporation of content by reference from another document requires an explicit, clear intent to incorporate that content by use of the root words "incorporat(e)" and "reference." *Id.* (citing 37 C.F.R. § 1.57(b)). In addition, incorporation of content requires a clear identification of the referenced patent, application or publication. *Id.*

In the instant case, the Kraemer '706 patent includes one reference to another document in the following:

A layer of software **83** (called the VPN layer and discussed in Alan J. Kirby et al., U.S. patent application Ser. No. 08/585,765, filed on Jan. 16, 1995 now abandoned in favor of Ser. No. 08/946,941 filed on Oct. 9, 1997) looks, in turn, at each of the packets in the look-ahead buffer on a FIFO basis.

Col. 3, ll. 40-45. As shown, however, the above reference includes neither the root word "incorporat(e)" nor the root word "reference." Accordingly, Applicant respectfully submits that the Kraemer '706 patent does not incorporate by reference content from any other document, much less the aforementioned '734 publication.

Moreover, even if one argued (albeit incorrectly) that the Kraemer '706 patent does properly incorporate by reference content from another document, the Kraemer '706 patent does not incorporate by reference content from the '734 publication, as alleged by the Official Action. As indicated above, the Kraemer '706 patent only references U.S. Patent Application Serial Nos. 08/585,765 and 08/946,941. Neither of these patent applications, however, are the aforementioned '734 publication. In fact, not only are the referenced patent applications not the cited '734 publication, but the '734 publication

does not even claim priority from either of those applications. Instead, the '734 publication claims priority from U.S. Patent Application Serial No. 08/586,230.

Applicants therefore respectfully submit that the Kraemer '706 patent does not teach or suggest the key exchanger or the translator of the claimed invention, and that the '734 publication is not properly incorporated by reference into the Kraemer '706 patent to support its disclosure of those features of the claimed invention. Since the Kraemer '706 patent does not teach or suggest at least a key exchanger or translator as recited by independent Claim 1, independent Claim 1 is patentably distinct from the Kraemer '706 patent. Thus, the rejection of independent Claim 1 is overcome, and Applicants respectfully request withdrawal of the rejections of Claim 1.

Independent Claim 6 recites a method for detecting adversarial activity on a network that includes:

- storing a host table;
- deriving a cipher key;
- translating predetermined portions of packet header information of a data packet according to a cipher algorithm keyed by the cipher key, wherein the predetermined portions include an address;
- mapping the address to the host table;
- issuing a request to the network to resolve the address when the address does not match an entry in the host table and supplementing the host table with the address upon receipt of a reply to the request that indicates that the address is valid; and
- triggering a security device when the address does not match an entry in the host table.

Likewise, independent Claim 11 recites a device for detecting adversarial activity on a network and includes various means for performing the method of Claim 6, while independent Claim 16 recites a bastion host adapted for processing packet header information of the data packet and operable to perform the method of Claim 6.

For similar reasons to those described above in conjunction with independent Claim 1, independent Claims 6, 11 and 16 are also not taught or suggested by the Kraemer '706 patent. Thus, the rejection of amended independent Claims 6, 11 and 16 are also overcome, and Applicants respectfully request that the rejections of Claims 6, 11 and 16 be withdrawn.

Claims 2-5, 7-10, 12-15 and 17-24, which depend from independent Claims 1, 6, 11 and 16, are also patentably distinct from the Kraemer '706 patent, for at least the same reasons as described above in conjunction with their respective base independent claims.² As such, the rejections of the dependent claims are therefore also correspondingly overcome, and Applicants respectfully request that the rejections of dependent Claims 2-5, 7-10, 12-15 and 17-24 be withdrawn.

² As Applicants' remarks with respect to the base independent claims are sufficient to overcome the Examiner's rejection of all claims dependent therefrom, Applicants' silence as to the Examiner's assertions with respect to the dependent claims is not a concession by Applicants to the Examiner's assertions as to these claims, and Applicants reserve the right to analyze and dispute such assertions in the future.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Andrew T. Spence
Registration No. 45,699

Customer No. 32127
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111